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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 FREDERICK DOUGLAS WOOD , ) Criminal No. 02-CR-625-L-7  
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Petitioner, )  
v. )  
UNITED STATES OF AMERICA, )  
Respondent. )

**ORDER DENYING MOTION FOR  
MODIFICATION OF TERM OF  
IMPRISONMENT PURSUANT TO  
18 U.S.C. § 3582(c)(2)**  
**[Doc. Nos. 526, 530]**

17 On August 15, 2008, Petitioner Frederick Douglas Wood (“Petitioner”), proceeding *pro se*,  
18 filed a Motion for Relief of Sentence pursuant to 18 U.S.C. § 3582(c)(2). Respondent filed a  
19 response and opposition, and Petitioner filed a reply. Petitioner’s motion is based upon retroactive  
20 amendments to the Federal Sentencing Guidelines pertaining to crack cocaine offenses which  
21 became effective March 3, 2008. The Court has reviewed the record, the submissions of the parties,  
22 and the supporting exhibits and, for the reasons set forth below, **DENIES** Petitioner’s motion.

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**BACKGROUND**

Pursuant to a written plea agreement, Petitioner pled guilty on April 17, 2003, to one  
count of Conspiracy to Distribute Cocaine and Cocaine Base in violation of 21 U.S.C. §§  
841(a)(1) and 846. Petitioner admitted that he conspired with his co-defendants to distribute  
more than 50 grams of cocaine base (crack) and 5 kilograms of cocaine. Petitioner admitted that  
he arranged narcotic transactions with co-defendant Robert Adams (“Adams”) and discussed

1 who would cook the powder cocaine into crack cocaine. Petitioner also admitted to purchasing  
 2 crack cocaine and powder cocaine from Adams. Petitioner further admitted to planning the  
 3 robbery of a cocaine source of supply with a gun.

4 Based on Petitioner's prior criminal history, he was placed in a criminal history category  
 5 V. At sentencing, this Court found that the base offense level was 32 (based on 50 grams  
 6 cocaine base/5 kilograms of powder cocaine) and -3 for acceptance of responsibility, for an  
 7 adjusted base offense level of 29. The Court granted a one level departure for a package deal,  
 8 which resulted in a final adjusted base offense level of 28 and a guideline range of 130 to 162  
 9 months. Petitioner was sentenced to the low end: 130 months.

## 10 DISCUSSION

11 Petitioner moves for a reduction of his sentence, pursuant to 18 U.S.C. § 3582(c), based  
 12 on Amendment 706 to the Sentencing Guidelines, as amended by Amendment 711 (pertaining to  
 13 crack cocaine offenses). Amendments 706 generally reduced by two levels the base offense  
 14 level for crack cocaine offenses in § 2D1.1(c) of the Sentencing Guidelines. *See* Amendment  
 15 706, Supplement to Appendix C, Amendments to the Guidelines Manual. The Sentencing  
 16 Commission has given this amendment retroactive effect and has listed it in § 1B1.10(c) of the  
 17 Guidelines, a requirement for retroactive amendments. *See* U.S.S.G. § 1B1.10(c).

18 Due to the ethnic disparity in sentencing, Congress has created the above changes to the  
 19 advisory Guidelines as it relates to cocaine base. Petitioner falls within the purview of this  
 20 change. A motion for reduction of sentence under § 3582(c)(2) "is simply a vehicle through  
 21 which appropriately sentenced prisoners can urge the court to exercise leniency to give [them]  
 22 the benefits of an amendment to the guidelines." *United States v. Townsend*, 98 F.3d 510, 513  
 23 (9th Cir. 1996) (quoting *United States v. Whitebird*, 55 F.3d 1007, 1011 (5th Cir. 1995) (internal  
 24 quotation marks omitted)). Whether to reduce a sentence under § 3582(c)(2) is a discretionary  
 25 decision. *See* 18 U.S.C. § 3582(c)(2) ("[T]he court *may* reduce the term of imprisonment.")  
 26 (emphasis added); *Townsend*, 98 F.3d at 512 ("[T]he decision whether to reduce a sentence  
 27 under § 3582 is within the discretion of the district court judge."); *United States v. Cueto*, 9 F.3d  
 28 1438, 1440 (9th Cir. 1993) ("Courts have discretion to reduce a previously imposed term of

1 imprisonment when the Sentencing Commission reduces the sentencing range, and the reduction  
 2 is ‘consistent with applicable policy statements issued by the Sentencing Commission.’ ”)  
 3 (quoting 18 U.S.C. § 3582(c)(2)).

4 In determining whether a sentence should be modified following amendment of the  
 5 Guidelines, the Court should consider the term of imprisonment that it would have imposed had  
 6 the amendment(s) to the Guidelines been in effect at the time the particular defendant was  
 7 sentenced. U.S.S.G. § 1B1.10(b). In addition, the Court should determine whether a reduced  
 8 sentence is warranted in light of the factors set forth in 18 U.S.C. § 3553(a).<sup>1</sup> *See United States*  
 9 *v. Hicks*, 472 F.3d 1167, 1171 (9th Cir. 2007) (“While § 3582(c)(2) proceedings do not  
 10 constitute full resentencings, their purpose is to give defendants a new sentence. This  
 11 resentencing, while limited in certain respects, still results in the judge calculating a new  
 12 Guideline range, considering the § 3553(a) factors, and issuing a new sentence based on the  
 13 Guidelines.”). *See also United States v. Bravo*, 203 F.3d 778, 780-81 (11th Cir. 2000) (“In  
 14 considering a motion for such a reduction, we have held that a district court must engage in a  
 15 two-part analysis. Initially, the court must recalculate the sentence under the amended  
 16 guidelines, first determining a new base level by substituting the amended guideline range for  
 17 the originally applied guideline range, and then using that new base level to determine what  
 18 ultimate sentence it would have imposed. . . . The next step is for the court to decide whether, in  
 19 its discretion, it will elect to impose the newly calculated sentence under the amended guidelines  
 20 or retain the original sentence. This decision should be made in light of the factors listed in 18  
 21 U.S.C. § 3553(a).”).

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 23 <sup>1</sup> Section 3553(a) directs a court to consider the following factors in determining the particular sentence  
 24 to be imposed: “(1) the nature and circumstances of the offense and the history and characteristics of the  
 25 defendant; (2) the need for the sentence imposed: (A) to reflect the seriousness of the offense, to promote respect  
 26 for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct;  
 27 (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed  
 28 educational or vocational training, medical care, or other correctional treatment in the most effective manner; (3)  
 the kinds of sentences available; (4) the kinds of sentence and the sentencing range established for: (A) the  
 applicable category of offense committed by the applicable category of defendant as set forth in the guidelines. . .  
 (5) any pertinent policy statement . . . (6) the need to avoid unwarranted sentence disparities among defendants  
 with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any  
 victims of the offense.” 18 U.S.C. § 3553(a).

1 The Court must consider the policy considerations of § 3553(a) in determining whether  
2 Petitioner should receive a reduction in his sentence. In making this decision, the Court limits its  
3 consideration to the facts admitted in the plea agreement, the Petitioner's Presentence Report,  
4 the Addendum to the Presentence Report, and the arguments provided by the parties in their  
5 written submissions.

6 **A. The Nature and Circumstances of the Offense and History and Characteristics of**  
7 **the Petitioner.**

8 Petitioner's offense is serious by nature. *See United States v. Salerno*, 481 U.S. 739, 750  
9 (1987) (noting that crimes singled out for a presumption of pretrial detention (like the crime  
10 charged in this case) are considered "extremely serious" because the perpetrators are considered  
11 "far more likely to be responsible for dangerous acts in the community after arrest").

12 Even beyond the nature of the offense, the specific circumstances of Petitioner's crimes  
13 were aggravated in several respects. Petitioner and his co-defendants were experienced drug  
14 traffickers and Petitioner was a trusted distributor of crack cocaine, a gun dealer, and a robber.  
15 Petitioner admitted in his plea agreement that he sold crack cocaine and powder cocaine and that  
16 he discussed cooking cocaine into crack with one of his co-defendants. Petitioner also set up a  
17 robbery of a drug supplier. Petitioner planned to rob a "Cuban" source of supply and co-  
18 defendant Adams was going to supply the gun.

19 Additionally, Petitioner has an extensive criminal background. Petitioner is a  
20 documented West Coast Crips gang member. His criminal background reaches back to 1994,  
21 when he was age 18. His criminal history includes convictions for pandering, armed robberies  
22 of business establishments, and home invasion and armed robbery. Since 1997, it appears that  
23 Petitioner was out of custody for a total of less than 7 months.

24 Petitioner's background is also extremely violent. In 1997, Petitioner was involved in  
25 two armed robberies. The first was a Pawn & Jewelry store in San Ysidro, California. There,  
26 the robbers pointed their weapons directly at the victims and shots were fired as they fled the  
27 store. The second robbery was Sacks Fifth Avenue in the Fashion Valley Mall. During that  
28 incident, a civilian was held hostage at gun point. Barely 6 months after being released from

1 custody for those convictions, Petitioner committed a home invasion and armed robbery. On  
2 January 2, 2002, Petitioner and two other individuals broke into a home at 2:45 a.m., wearing ski  
3 masks and armed with a handgun. One of the victims was beaten and a female victim was  
4 sexually accosted. In declining Petitioner's request that his federal sentence run concurrent with  
5 his state conviction for the home invasion robbery, this Court noted that the home invasion was  
6 violent and "was a serious offense."

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8 **B. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, to**  
9 **Promote Respect for the Law and Provide Just Punishment and Deterrence, to**  
10 **Protect the Public from Further Crimes of the Defendant and to Provide the**  
11 **Defendant with Education, Training, Medical Care or Other Correctional**  
12 **Treatment.**

13 Petitioner's offense in this case involves a very serious drug conspiracy. While Petitioner  
14 was not the most culpable of the defendants charged, he nonetheless was an integral part of the  
15 conspiracy. Drugs alone often involve non-violent behavior; however, in Petitioner's case, he  
16 has a violent history and was involved in conducting and planning violent robberies, as  
17 illustrated by the Court authorized wire interceptions. This is a concern to the Court and one of  
18 the reasons why the Court declined to grant a departure for minor role. The sentence imposed  
19 was meant to protect the public and to provide deterrence and appropriate punitive punishment  
20 for Petitioner's criminal conduct that was violent and appeared to be constant from the age of 18.

21 At sentencing, the Court considered Petitioner's desire to turn his life around. However,  
22 the Court declined to run his federal sentence concurrent to his state sentence based on the  
23 violence involved in Petitioner's offenses.

24 The Court notes that since his incarceration, Petitioner has commendable in-custody  
25 activity, including attaining his GED or High School Diploma and completing several  
26 educational courses. These activities will likely be critical to any success he may achieve on  
27 release. However, based on all the factors taken into consideration, the Court believes Petitioner  
28 must accept responsibility for actions made in his adult life, which included participating in the  
drug conspiracy for which he was convicted. While the Court has the option to reduce  
Petitioner's sentence by two points under the retroactive amendments, the Court exercises its

1 discretion not to do so.

2 **CONCLUSION**

3 The Court has considered all of the applicable § 3553(a) factors and declines to depart  
4 two levels based on the retroactive amendments to the advisory Guidelines. Based on all of the  
5 above considerations, Petitioner's sentence was proper at the time of sentencing and continues to  
6 remain appropriate. In this case, Petitioner's 130 month sentence falls within the new guideline  
7 range of 120<sup>2</sup>-137 months; a further reduction is not warranted. Therefore, the Court considers  
8 the originally imposed sentence of 130 months as the minimum necessary to address Petitioner's  
9 conduct, and thereby declines to reduce his sentence for the reasons thus stated. The Court  
10 further **DENIES** Petitioner's Motion for Appointment of Counsel as **MOOT**.

11 **IT IS SO ORDERED.**

12  
13 DATED: June 4, 2009

14   
15 M. James Lorenz  
United States District Court Judge

16 COPIES TO:

17 PETITIONER  
18 U.S. ATTORNEY'S OFFICE  
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25 <sup>2</sup> Based on the retroactive cocaine base amendment, the base offense level for 50 grams of  
26 cocaine base is now 30 under § 2D1.1. The guideline adjustments for acceptance of  
27 responsibility and group disposition results in a new adjusted base offense level of 26 and a new  
28 guideline range of 110-137 months. However, the minimum mandatory sentence for Count 1 of  
the indictment is 120 months pursuant to 21 U.S.C. § 841(b)(1)(A)(iii). Under U.S.S.G. §  
5G1.1(c)(2), the sentence may not be less than 120 months, even though the new guideline  
range falls below the statutorily required minimum sentence. Therefore, the actual new guideline  
range is 120-137 months.